

July 26, 2000

Feinstein Gun Amendment Puts Politics Over Police Officers' Safety

The quality of a service weapon can mean the difference between life and death for a law enforcement officer. Start introducing factors other than quality into the selection of a service weapon — such as its manufacturer's political stripes — and officers' lives will be put in jeopardy. Not content to jeopardize the right of citizens to defend themselves, Senate Democrats have indicated they will offer an amendment to the Treasury, General Government appropriations bill (S. 2900) that will jeopardize the lives of law enforcement, too. Senator Feinstein's amendment would block Republican efforts to prevent the Administration from giving preferential treatment to companies that back its gun control agenda.

Background

Enemies of the right to self-defense have added a new tactic in recent years, launching a full-out assault on gun manufacturers. Some 30 cities have filed suit against law-abiding manufacturers, accusing them of fomenting violence and asking the courts to force them to pay the cities' cost of fighting gun crime. Jumping on the bandwagon, Secretary of Housing and Urban Development (HUD) Andrew Cuomo threatened to organize a similar lawsuit by America's 3,200 public housing authorities.

Meritless, anti-democratic, and riddled with hypocrisy, the lawsuits are meant (1) to shift the blame for the cities' (and HUD's) failure to protect law-abiding citizens and (2) to bludgeon the small industry with legal costs until it surrenders to plaintiffs' political demands. In a moment of bravado, Secretary Cuomo threatened that manufacturers who did not comply with his demands would suffer "death by a thousand cuts." Senate Democrats further tried to bully manufacturers by denying them bankruptcy protections available to any other business [the effort failed by a vote of 29-68 (see RVA No. 4, 2/2/00)].

Eventually, one manufacturer succumbed. British-owned Smith & Wesson agreed to follow a wish-list of regulations the Clinton Administration has been unable to implement through democratic means. In return, Secretary Cuomo promised to steer government business to Smith & Wesson and other manufacturers who cut a deal with the Administration. (To date, no other manufacturers have done so.)

The Treasury, General Government appropriations bill (S. 2900) was reported to the Senate last week with language (sponsored by Senator Shelby) designed to prevent the Administration from giving preferential treatment to companies that back its political agenda:

SEC. 515. None of the funds made available in this Act may be used to implement a preference for the acquisition of a firearm or ammunition based on whether the manufacturer or vendor of the firearm or ammunition is a party of an agreement with a department, agency, or instrumentality of the United States regarding codes of conduct, operating practices, or product design specifically related to the business of importing, manufacturing, or dealing in firearms or ammunition under chapter 44 of title 18, United States Code.

Senate Democrats attempted and failed to remove Section 515 in subcommittee markup. Senator Feinstein today vowed she would attempt to remove this language as the Democrats' first amendment to the funding bill.

Cops Oppose Letting Politics Choose Their Weapons

Limiting a police officer's choice of sidearm can leave him with a less effective weapon when his life depends on it. Senator Feinstein's amendment would let the Administration compel cops to use weapons that meet the Administration's political needs, rather than the life-or-death needs of officers in the field. In a letter to Majority Leader Trent Lott, the national president of the Fraternal Order of Police expressed opposition to efforts by Senators to enforce HUD's policy [emphasis added; see also attached letter]:

"The top concern of any law enforcement agency purchasing firearms is officer safety, not adherence to a particular political philosophy. . . Reducing their choice by imposing a requirement that they buy only from gunmakers who agree to certain HUD stipulations does not help the law enforcement mission. . . . We are urging you to discourage any initiatives imposing restrictions on the ability of law enforcement agencies to purchase the very best equipment available. Efforts to the contrary are political only and do not benefit public safety."

Similar efforts at the local level have met with resistance from police chiefs and officers. According to *The Wall Street Journal* [4/11/00; emphasis added]:

"Since officers often want a choice of weapons, some municipalities have arranged for them to use their own cash to choose from a list of approved models. In Miami-Dade County, for example, selections for members of the 3,000-person force include Beretta and Sig Sauer. [Smith & Wesson] guns are also on the list, but police officers say those have become less popular in recent years . . .

“Local officials acknowledge they are reluctant to risk hurting morale by ending officers’ ability to choose their weapon . . . ‘Certain people have their own preferences, and those who want to go with Sig Sauer are not going to have a Smith & Wesson,’ says John Rivera, president of the union for Miami-Dade police.

“Other police representatives agree that their constituents would resist any directive to favor guns based on a manufacturer’s willingness to settle politicized lawsuits. Choosing a gun is ‘a health and safety issue,’ says Jack Roberts, president of the Southern States Police Benevolent Association, which represents 18,000 officers in Georgia and eight other states.

“Police chiefs also are worried about alienating their troops. Chief Trevor Hampton of Flint, Mich., faces the imminent replacement of the decade-old 9mm Smith & Wessons for his 350-person force. The city’s mayor has asked Chief Hampton to buy new S&Ws, but the chief’s firearm experts have rated the Sig Sauer as more durable and accurate, and the police rank-and-file prefer the better-known and easier-to-shoot Glock. ‘If we had our druthers we’d go with the one the majority likes,’ Chief Hampton says . . .”

Why the Capitol Police Switched from Smith & Wesson

The experience of the United States Capitol Police is illustrative. The Capitol Police recently switched from Smith & Wesson Model 5946 9mm semiautomatic pistols to Glock Model 22 .40 caliber semiautos. Part of this reason was a desire for the more powerful .40 caliber. The Capitol Police found the Glock Model 22 to be the most versatile and durable among the .40 calibers they considered.

Capitol police need a versatile weapon because they perform various duties: guarding building entrances, patrolling Capitol grounds on bicycles, and providing bodyguard protection to members of Congress. They require a uniform weapon for situations (*e.g.* a firefight) where officers must share weapons or ammunition magazines. They also require a durable weapon that is less prone to malfunction in critical situations. Based on extensive testing of available .40 caliber semiautomatics by the Drug Enforcement Agency and the Federal Bureau of Investigation, the Capitol Police chose the Glock Model 22 as the most durable and versatile .40 caliber based on their particular needs.

If the Capitol Police had been required to purchase a weapon based on the political leanings of its manufacturer, it would have left officers with a less versatile or less durable weapon. That would pose not only a threat to their lives, but to all those who work in or visit the Capitol buildings and grounds.

Feinstein Measure Spells "Fraud, Favoritism & Corruption"

Attempts to persuade states to hire guns only from those who cut a deal with the Administration also have encountered resistance. Alabama Attorney General Bill Pryor wrote that such a preference **"seems to invite law enforcement officials to ignore or deliberately violate federal and state competitive bid laws,"** which would "increase the potential for fraud, favoritism and corruption" [letter to New York Attorney General Eliot Spitzer, 3/24/00].

HUD Should Get Back To Basics

No one has been a more vocal proponent of forcing cops to rely on politically correct guns — in the name of gun safety — than Secretary Cuomo. Yet, according to the *Washington Times* [5/2/00], **Secretary Cuomo's own bodyguard apparently had a habit of leaving his gun "lying around" in public places, including the HUD cafeteria,** making suspect any gun safety pronouncements from the Secretary. Forcing cops to rely on weapons they don't want could jeopardize their lives. For someone like Secretary Cuomo to force them to do so is beyond nonsense.

Yet this is just the latest example of Secretary Cuomo abusing his authority to play politics. Last year, HUD's inspector general reported to Congress that **"The Gun Buyback initiative stands as a testament to HUD's eagerness to ride currents of public opinion that lead the Department away from its core mission"** [*Semiannual Report to Congress*, 9/30/99]. This is one of the reasons that HUD consistently has made the General Accounting Office's list of agencies that present a "high risk" for waste and fraud.

Let the Police Choose

The most important factor for law enforcement agencies and officers when choosing a service weapon is officer safety. Smith & Wesson firearms may or may not be the best weapon for the job; that question depends on the job and personal needs of the officer involved (which is why some law enforcement agencies allow individual officers to choose their own service weapons). Injecting other considerations inevitably means safety will suffer.

Police use these weapons to protect our lives, and their own. The choice should be theirs.

RPC staff contact: Michael F. Cannon, 4-2946
Attachments

Sources:

"Cuomo's Bodyguard Leaves His Revolver in Cafeteria; Tries to Retaliate Against Those Who Reported Incident," *Washington Times*, May 2, 2000, page A3.

Letter from Fraternal Order of Police President Gilbert G. Gallegos to Senate Majority Leader Trent Lott, March 27, 2000 [attached].

Letter from Alabama Attorney General Bill Pryor to New York Attorney General Eliot Spitzer, March 24, 2000.

"Plan to Pressure Gun Makers Into Changing Hits Some Snags," *The Wall Street Journal*, April 11, 2000.

Additional RPC policy papers:

"HUD's Gun Lawsuit Threat: What Do Public Housing Authorities Think?" February 28, 2000.

"Another Day, Another Chastened Mayor; Chicago's Anti-Gun Lawsuit: A Dismissal," February 16, 2000.

"A HUD Lawsuit Against the Gun Industry? Secretary Cuomo's Assault Weapon," January 24, 2000.

"Judge Rejects Cincinnati's Anti-Gun Lawsuit," October 14, 1999.

Cuomo's bodyguard leaves his revolver in cafeteria

Tries to retaliate against those who reported incident

By George Archibald
THE WASHINGTON TIMES

Housing Secretary Andrew M. Cuomo's chief bodyguard has forgotten his .38-caliber revolver on several occasions while on duty, leaving it where others could easily find it, agency employees say.

In the most recent incident, Clarence Day, a 68-year-old retired Metropolitan Police officer and close confidant of Mr. Cuomo, left the loaded pistol in the cafeteria of the Department of Housing and Urban Development and tried to retaliate against security officials who made a formal incident report, the employees said.

HUD spokesman David Egner acknowledged the Feb. 9 cafeteria incident but said, "There were no other incidents of any gun being left anywhere else."

Citing Mr. Day's 40-year career as a decorated Army veteran, police officer and bodyguard for six HUD secretaries, Mr. Egner said, "It would be wrong to judge his entire career based on one unfortunate and uncharacteristic incident."

But several HUD co-workers, who spoke on the condition of anonymity for fear of retaliation, said the latest and only officially reported incident Feb. 9 is part of a pattern dating back at least a year where Mr. Cuomo's bodyguard has left his gun and other belongings "lying around."

They said Mr. Day forgot his gun, which he carries in a small handbag, on at least two other occasions when he was traveling with the HUD secretary. The bag was found by federal motor pool employees and returned to him without an official incident report, the employees said.

The incident and existence of a formal report have embarrassed Mr. Cuomo, who has made a big

Mr. Cuomo and his assistant secretary, Joseph Smith, personally interviewed three employees responsible for the report to pressure them to change it, an official said.

issue of gun safety and recently joined President Clinton in efforts to restrict availability of firearms to the general public.

On Feb. 9, the gun was found that day by another cafeteria patron and turned over to HUD's security office. The gun was found in a black canvas bag imprinted with the official U.S. government eagle surrounded by the words, "U.S. Department of State Diplomatic Security Service," the report said.

According to the report, an official of HUD's building management office directed Lt. Col. Paul B. Berney, a supervisor for Knight Protective Service Inc., HUD's security contractor, "to write a report and have Mr. Day sign for the weapon once he came down to the security office to retrieve his weapon."

Mr. Cuomo and his assistant secretary for administrative services, Joseph Smith, personally interviewed three security and building services employees responsible for the report in an effort to pressure them to change it, an official said.

Mr. Day "exploded" after the gun incident report was placed in official files as an "adversarial report," one agency employee said. "He went ballistic. He threatened retaliation."

The incident report said Mr. Day "was most apologetic and grateful" when he went to Lt. Col. Berney's office to retrieve his gun on Feb. 9. "He explained that the weapon in question was his personal weapon and not his service

weapon," the report said.

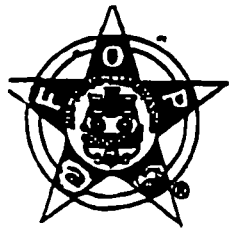
After the incident, the employees said, the secretary's office "put things in motion to bury the report" by appointing Mr. Day to replace Edward Willoby as department overseer of HUD's building security contract with Knight; a subsidiary of Halifax Inc.

Mr. Day was set to take over management of the security operation, officials said, until the move was questioned as retaliation for the adverse report regarding the gun incident. "That has been put in a holding pattern," said a HUD official involved in the discussions who asked not to be named. "Mr. Willoby is still the contract officer overseeing security."

Mr. Day and Mr. Willoby did not respond to repeated inquiries and telephone messages throughout the week. Lt. Col. Berney also declined to comment.

Mr. Day was forcibly retired July 31, 1999, by the Office of Personnel Management (OPM), because federal law enforcement officers are required to retire at age 57. Officials could not explain this week how he was able to keep working 11 years beyond his mandatory retirement age and why he was forcibly retired only to be rehired immediately by Mr. Cuomo.

HUD officials said he is now a GS-13, Step 10 security specialist in HUD's office of administration. According to federal pay scales, Mr. Day earns \$79,155 a year.



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27 March 2000

The Honorable Trent Lott
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Senator Lott,

I am writing to you on behalf of the more than 285,000 members of the Fraternal Order of Police on a police officer safety matter of great concern to us.

In the wake of one firearms manufacturer's decision to adhere to certain standards of conduct imposed by the Department of Housing and Urban Development (HUD), we are concerned that members of the Senate may offer legislation or amendments to pending bills on the Senate floor which would require local, State and/or Federal law enforcement agencies to purchase their firearms from manufacturers who have agreed to HUD's terms. We strongly disagree with this approach to firearms safety and would vigorously oppose any such efforts.

The top concern of any law enforcement agency purchasing firearms is officer safety, not adherence to a particular political philosophy. Law enforcement agencies have to stretch every dollar and they need to get the best weapons for their officers that their budget allows. Reducing their choice by imposing a requirement that they buy only from gunmakers who agree to certain HUD stipulations does not help the law enforcement mission.

Firearms issues are difficult issues as we try to walk the fine line between public safety and constitutional rights. We have worked with the Senate successfully in the past on these issues and we have always found you to be a champion of the views of law enforcement in this debate. We are urging you to discourage any initiatives imposing restrictions on the ability of law enforcement agencies to purchase the very best equipment available. Efforts to the contrary are political only and do not benefit public safety.

I hope that you will keep the view of the Fraternal Order of Police in mind should this matter become an issue. Please feel free to contact me or Executive Director Jim Pasco through my Washington office if I can be of any further assistance.

Sincerely,

Gilbert G. Gallegos
National President